

this regard, the Commission notes that the Phlx has stated that the longer-term 3D Options will meet the needs of investment managers who are seeking to protect portfolios against foreign exchange fluctuations but who do not wish to receive or deliver the underlying currency to achieve that goal. Similarly, the Exchange believes that corporate treasurers seeking balance sheet protection would also prefer paying or receiving U.S. dollars rather than exchanging German marks. Both of these potential users may have long-term concerns for which the one-week and two-week expiration 3D Options would not be an appropriate hedging vehicle. Finally, the Exchange believes that retail traders who may have a long-term market perspective will find the longer-term 3D Options attractive because they will not have to establish foreign bank credit lines or have to deal with the delivery or receipt of the underlying foreign currency at settlement.<sup>11</sup>

Additionally, the Commission notes that except as modified herein, all of the representations made by the Exchange and all of the rules approved by the Commission in connection with the 3D Approval Order, including, but not limited to, aggregation with regular Deutsche mark FCOs for position and exercise limit purposes, extended trading hours on expiration Mondays, Exchange and bank holidays on which 3D Options will not expire, and automatic exercise of in-the-money 3D Options,<sup>12</sup> will also apply to the longer-term 3D Options listed pursuant to this approval.<sup>13</sup>

As a result, for the reasons stated above and in the 3D Approval Order,<sup>14</sup>

<sup>11</sup> The Commission notes that prior to listing longer-term 3D Options the Exchange will be required to provide written representations that both the Exchange and the Options Price Reporting Authority have the necessary systems capacity to support these new series of options.

<sup>12</sup> See 3D Approval Order, *supra* note 6.

<sup>13</sup> One additional modification herein is with regard to customer margin. In connection with the 3D Approval Order, the Phlx agreed to collect margin within two days following the date on which a customer enters into a cash/spot FCO position and to maintain customer margin at a level sufficient to produce at least a 97% confidence level in the volatility of the Deutsche mark in relation to the U.S. dollar for all two-day intervals during the two year period preceding the time of measurement. These margin provisions will apply to the longer-term 3D Options only when these options have two weeks or less to expiration. At all other times, the Exchange's customer margin procedures applicable to the Phlx's regular Deutsche mark FCOs will apply. Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on May 23, 1995.

<sup>14</sup> See 3D Approval Order, *supra* note 6.

the Commission finds that the proposed rule change is consistent with the Act.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 merely withdraws the Exchange's request for spread margin treatment between the Exchange's German mark FCOs and the 3D Options.<sup>15</sup> Because the requested spread margin treatment would have been a liberalization of the Exchange's existing margin rules, withdrawing this request from the proposal does not raise any regulatory issues.

The Commission notes that the termination by the Phlx of its relationship with one of the vendors used to calculate the settlement value for the 3D Options is, in this case, a non-substantive change. In this regard, based on the representations by the Phlx describing the procedures used for calculating the settlement value, including the backup procedures to be used in the event of a complication, the Commission believes that the Phlx will be able to continue to comply with the procedures specified in the 3D Approval Order despite this change.<sup>16</sup> Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 2 to the Phlx's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities, and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and

<sup>15</sup> See Amendment No. 2, *supra* note 5.

<sup>16</sup> See 3D Approval Order, *supra* note 6. The Commission expects the Phlx to continue to notify the Commission prior to making any change in the procedures approved in the 3D Approval Order.

copying at the principal office of the Phlx.<sup>16</sup>

All submissions should refer to the File No. SR-Phlx-95-02 and should be submitted by June 22, 1995.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-Phlx-95-02), as amended, is approved contingent upon the Exchange's submission to the Commission of adequate systems capacity representations.<sup>18</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-13413 Filed 5-31-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35761; File No. SR-NASD-95-19]

**Self-Regulatory Organizations: Notice of Filing of Proposed Rule change by National Association of Securities Dealers, Inc. Relating to Limited Partnership Rollup Transactions**

May 24, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on May 4, 1995 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the terms of Substance of the Proposed Rule Change**

The NASD is herewith filing a proposed rule change to add new paragraph 7 to Subsection (b)(2)(B)(vii)d. of Article III, Section 34 of the Rules of Fair Practice and to add new paragraph (vii) to Subsection (14)(D) to Part I of Schedule D to the By-Laws to exclude investment companies and business development companies from the definition of "limited partnership rollup transaction." The specific text of the rule change would apply to "a transaction involving only

<sup>16</sup> See 3D Approval Order, *supra* note 6. The Commission expects the Phlx to continue to notify the Commission prior to making any change in the procedures approved in the 3D Approval Order.

<sup>17</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>18</sup> See *supra* note 11.

<sup>19</sup> 17 CFR 200.30-3(a)(12) (1994).

entities registered under the Investment Company Act of 1940 or any Business Development Company as defined in Section 2(a)(48) of that Act."

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Federal legislation regulating limited partnership rollups ("Rollup Reform Act") was signed into law on December 17, 1993, and contained a mandate for the NASD to adopt its own rollup rule. The NASD's rule regulating rollups ("Rollup Rule") was approved by the SEC on August 15, 1994<sup>1</sup> and amended Article III, Section 34 of the NASD Rules of Fair Practice to prohibit NASD members and associated persons from participating in a "limited partnership rollup transaction" unless the transaction includes specified provisions to protect the rights of limited partners. The Rollup Rule further amended Part III of Schedule D to the By-Laws to prohibit the authorization for quotation on the Nasdaq National Market of any security resulting from a "limited partnership rollup transaction" unless the transaction is conducted in accordance with certain specified procedures designed to protect the rights of dissenting limited partners. The NASD Roll Up Rule was designed to conform to the federal roll up legislation.

Subsequent to approving the NASD's Rollup Rule, the SEC adopted new Rule 3b-11 to exclude from the definition of "limited partnership rollup transaction," among other things, transactions involving entities registered under the Investment Company Act of 1940 (the "1940 Act") or any Business Development Company as defined in Section 2(a)(48) of the 1940 Act.<sup>2</sup> In its adopting release, the SEC stated that it

was adopting the new Rule in order to define related terms used in the federal rollup definition ". . . for purposes of, among other things, the SRO rules."

The SEC has requested that the NASD amend the Rollup Rule to conform the NASD's definition of "limited partnership rollup transaction" to the definition adopted by the SEC. The proposed rule change amends the Rollup Rule by adding as an exclusion for investment companies and business development companies to the definition of "limited partnership rollup transaction" new paragraph 7 to Subsection (b)(2)(B)(vii)d. to Article III, Section 34 of the Rules of Fair Practice and new paragraph (vii) to Subsection 14(D) to Part I of Schedule D. Thus, if the proposed rule change is adopted, investment companies and business development companies would be excluded from the purview of the Rollup Rule. Investment Companies and Business Development Companies are already subject to extensive regulation under the 1940 Act and have not been perceived as entities connected with the types of abusive limited partnership rollup transactions for which investor protection provisions of the rollup rules were sought.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>3</sup> which require that the rules of the association be designed to prevent fraudulent and manipulative acts and promote just and equitable principles of trade in that the proposed rule change provides for regulatory consistency in the definition of "limited partnership rollup transaction" and appropriately excludes investment companies and business development companies from unnecessary, and potentially burdensome, additional regulation.

### (B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at a principal office of the NASD. All submissions should refer to File No. SR-NASD-95-19 and should be submitted by June 22, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-13307 Filed 5-31-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21095; 811-8442]

## Countdown to Retirement Funds; Notice of Application

May 24, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

<sup>1</sup> See, Securities Exchange Act Release No. 34533 (August 15, 1994); 59 FR 43147 (August 22, 1994).

<sup>2</sup> See, Securities Act Release No. 7113; Securities Exchange Act Release No. 35036 (December 2, 1994); 59 FR 63676 (December 8, 1994).

<sup>3</sup> 15 U.S.C. § 78o-3.